

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INDUSTRIAL MINERAL PRODUCTS, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 1096

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER CHRIS SMITH:

A formal hearing on the appeal of Industrial Mineral Products, Inc. (IMP) to two notices of civil penalty, each in the amount of \$250.00 for alleged violations of Section 9.15(a) of Regulation I came on before Chris Smith, Pollution Control Hearings Board member, in Tacoma, Washington on February 7, 1977.

Appellant was represented by its president, Mr. Victor Hoffman; respondent was represented by its attorney, Keith D. McGoffin. Hearing examiner Ellen D. Peterson presided.

1 Having heard the testimony or having read the transcript, having
2 considered the exhibits, exceptions from the respondent and reply to
3 exceptions by appellant, said exceptions being granted in part and
4 denied in part, the Pollution Control Hearings Board makes the following

5 FINDINGS OF FACT

6 I.

7 Pursuant to RCW 43.21B.260, respondent has filed a certified
8 copy of its Regulation I and amendments thereto.

9 II.

10 Regular operation of the ASARCO Smelter at Tacoma, Washington
11 results in the daily production of approximately 700 tons of slag.
12 This material, which resembles a high-iron content basalt, is in a
13 molten state (approximately 2300°F.) when it leaves the Smelter.
14 The slag is conveyed in lorries from the Smelter to the slag dump,
15 north of the Smelter on Commencement Bay, where it is processed.

16 III.

17 The processing site is leased by appellant Industrial Mineral
18 Products, Inc. In normal operations at the site, molten slag is
19 poured, allowed to cool for two days, is broken up with a bulldozer,
20 is crushed and screened on the third day, and is hauled away on the
21 fourth day. Unless the slag has cooled sufficiently to allow
22 application of water without excessive evaporation, each pass of
23 the bulldozer can produce a "dense, dark cloud" of particulates,
24 rising as much as fifty feet.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 IV.

2 Until 1973, ASARCO granulated the slag, quenching the molten
3 material by pouring it into a high pressure water stream, where it
4 formed a coarse sand. In 1973, Black Knight, Inc., a subsidiary of
5 IMP, took over responsibility for disposition of the slag through a
6 royalty arrangement with the Smelter.

7 V.

8 On April 11, 1974, in response to a notice of construction
9 filed by Black Knight, Inc., Puget Sound Air Pollution Control Agency
10 (PSAPCA) granted approval for the processing facility, subject to the
11 following condition:

12 "Pursuant to Regulation I, Sections 9.12(b) and
13 9.15(a) no visible emissions shall be permitted
14 from this operation. The proposed water sprays
shall suppress all visible emissions from fracturing,
crusing, screening and loading of slag."

15 No visual emissions were observed from the operation during 1974.

16 VI.

17 In March, 1975, IMP sold Black Knight, Inc. to a Canadian company,
18 which failed to successfully maintain the markets for the slag which
19 IMP had created. In July, 1976, IMP, as major creditor, reassumed
20 control of Black Knight, Inc. and its operations, including a substantial
21 stockpile of material which filled three of the four previously
22 available dumping areas.

23 This resultant loss of work areas necessitates a greatly reduced
24 cooling period; the watering process, which under normal operation
25 would suppress all visible emissions, is not now sufficient to control
26 the dust.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

VII.

On July 22, 1976, PSAPCA issued a notice of violation of 9.15(a) and the resulting civil penalty was paid by IMP.

On October 1, 1976 PSAPCA's inspector observed particulate emissions rising from the subject bulldozing operation; Notice of Violation No. 12384 issued from the agency and a civil penalty (No. 2994) of \$250.00 was imposed. PSAPCA's inspector again observed dust emissions from the crushing of the slag piles on October 11, 1976. Notice of Violation No. 12395 was issued and a civil penalty (No. 3016) of \$250.00 assessed. From these two civil penalties based on respondent's Regulation I, Section 9.15(a)¹ appellant appealed.

VIII.

Appellant is pursuing several approaches to correct its problem:

1) It has applied for an emergency permit from the Corps of Engineers to replace a fill causeway at its barge loading operation; this construction will utilize a portion of the backlogged material.

2) It is working to reestablish markets for its product which were lost by the previous operator, which will enable it to further reduce the stockpile.

3) It is applying for a variance from PSAPCA.

4) It has unsuccessfully sought to expand the dumping area.

1. Section 9.15(a) provides:

. . . It shall be unlawful for any person to cause or permit particulate matter to be handled, transported or stored without taking reasonable precautions to prevent the particulate matter from becoming airborne. . . .

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 IX.

2 Appellant has successfully taken an industrial waste material and
3 converted it into a useful, albeit low-value, commodity which in its
4 primary use as log-yard ballast, replaces a nonrenewable resource,
5 aggregate.

6 Respondent at the same time, is properly carrying out its
7 responsibility to enforce Regulation I.

8 X.

9 Like the sorcerer's apprentice, appellant is faced with a daily
10 700 ton load of molten slag. The Board finds that imposing \$500.00
11 in fines on a company which has been operating at a deficit since
12 reassuming operation in July will not further the cause of environmental
-3 protection.

14 XI.

15 Any Conclusion of Law hereinafter stated which is deemed to be
16 a Finding of Fact is adopted herewith as such.

17 From such findings, comes these

18 CONCLUSIONS OF LAW

19 I.

20 Appellant Industrial Mineral Products, Inc. violated respondent's
21 Regulation I, Section 9.15(a) on October 1, 1976 and October 11, 1976.
22 However, the Pollution Control Hearings Board has consistently held
23 that when a violator takes affirmative steps to be in compliance,
24 penalty mitigation is in order.

25 II.

26 Any Finding of Fact which is deemed to be a Conclusion of Law is

27 FINAL FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER 5

1 herewith adopted as such.

2 From these Conclusions, the Board issues this

3 ORDER

4 Notice of Violation No. 12384 and Notice of Violation No. 12395
5 are each affirmed; Notice of Civil Penalty No. 2994 and Notice of Civil
6 Penalty No. 3016 are each affirmed; however, payment of the penalties is
7 suspended subject to performance of one of the following conditions within
8 six months of the date of this Order:

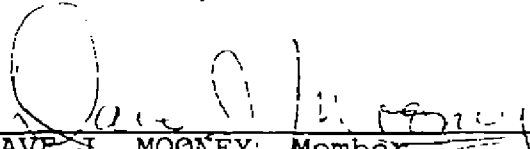
- 9 1) Incur no unexcused violations of Regulation I; or
10 2) Obtain a Variance from the PSAPCA Board; or
11 3) Submit an approved program to PSAPCA for the prevention of
12 emissions into the atmosphere.

13 Failure to comply will render the penalty due and payable.

14 DATED this 7th day of June, 1977.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 
18 CHRIS SMITH, Member

19
20 
21 DAVE J. MOONEY, Member

22
23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER 6